

DEC 16 2005

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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARTHA ELENA GONZALEZ
SALAZAR,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71782

Agency No. A76-728-255

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Martha Elena Gonzalez Salazar, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' decision summarily affirming an

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order denying her application for cancellation of removal on hardship grounds. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion an IJ's decision to deny a continuance, *Nakamoto v. Ashcroft*, 363 F.3d 874, 883 n.6 (9th Cir. 2004), and we review de novo due process claims, *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005). We deny the petition for review.

Gonzalez Salazar testified that her legal permanent resident father would remain in the United States upon her removal to Mexico, and that his medical and financial needs would be met by her United States citizen brother. Under these circumstances, the IJ did not abuse her discretion by denying Gonzalez Salazar's request for a continuance to obtain further evidence regarding her father's medical condition. *See Baires v. INS*, 856 F.2d 89, 91 (9th Cir. 1988) (requiring an IJ to consider the nature of the evidence to be presented and its importance to the alien's claim before denying a continuance).

Because the IJ did not abuse her discretion in denying Gonzalez Salazar's requests for a continuance, the Petitioner cannot show that her due process rights were violated. *See Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (holding that an alien must show error and substantial prejudice in order to prevail on a due process claim).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.